

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5239-09
Bill No.: Truly Agreed To and Finally Passed SS for SCS for HCS for HB 1837
Subject: Insurance - General; Insurance Dept.; Health Care Professionals
Type: Original
Date: May 25, 2006

FISCAL SUMMARY

| ESTIMATED NET EFFECT ON GENERAL REVENUE FUND | | | |
|--|--------------------------------------|--------------------------------------|--------------------------------------|
| FUND AFFECTED | FY 2007 | FY 2008 | FY 2009 |
| General Revenue* | (Unknown less than \$100,000) | (Unknown less than \$100,000) | (Unknown less than \$100,000) |
| | | | |
| Total Estimated Net Effect on General Revenue Fund* | (Unknown less than \$100,000) | (Unknown less than \$100,000) | (Unknown less than \$100,000) |

* Collected penalties and distributions to county treasurers nets to \$0.

| ESTIMATED NET EFFECT ON OTHER STATE FUNDS | | | |
|---|--------------------|--------------------|--------------------|
| FUND AFFECTED | FY 2007 | FY 2008 | FY 2009 |
| Insurance Dedicated | (\$123,563) | (\$120,524) | (\$123,555) |
| Consumer Restitution | Unknown | Unknown | Unknown |
| | | | |
| Total Estimated Net Effect on <u>Other</u> State Funds | (\$123,563) | (\$120,524) | (\$123,555) |

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 8 pages.

| ESTIMATED NET EFFECT ON FEDERAL FUNDS | | | |
|---|----------------|----------------|----------------|
| FUND AFFECTED | FY 2007 | FY 2008 | FY 2009 |
| | | | |
| Total Estimated Net Effect on <u>All</u> Federal Funds | \$0 | \$0 | \$0 |

| ESTIMATED NET EFFECT ON LOCAL FUNDS | | | |
|--|----------------|----------------|----------------|
| FUND AFFECTED | FY 2007 | FY 2008 | FY 2009 |
| Local Government | Unknown | Unknown | Unknown |

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of Administration (COA) - Division of General Services/Risk Management, COA - Administrative Hearing Commission, Missouri Senate, and Office of State Courts Administrator** assume the proposal will have no fiscal impact on their organizations.

Officials from the **Office of Attorney General (AGO)** assume any potential costs arising from this legislation can be absorbed with existing resources.

Officials from the **Office of Secretary of State (SOS)** state the fiscal impact for this proposal to the SOS for administrative rules is less than \$1,500. The SOS does not expect additional funding would be required to meet these costs. However, the SOS recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with its core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the Governor.

Officials from the **Department of Insurance (INS)** state the INS will be required to collect data to calculate median base rates, review all med mal rates, publish comparison on median base rates, develop a database to report on base rates charged by insurers, report on medical malpractice rates and support the Health Care Stabilization Fund Feasibility Board.

ASSUMPTION (continued)

One Insurance Product Analyst II FTE (beginning in FY2007) will assist data collection and development of median base rates for insurers, promulgate rules, assist with review of all medical malpractice rates, report on medical malpractice rates and support the Health Care Stabilization Fund Feasibility Board.

A half-time actuary (0.5 FTE) would be required to be hired in FY2007 to begin development of median base rates, review detailed information on rates including actuarial justification and other information as prescribed by the department, assist with reporting requirements and work with the Health Care Stabilization Fund Feasibility Board.

One-time computer contracting of \$27,540 (\$90/hrX306 hours) will be necessary to implement the provisions of the bill. Requirements identified include: 1) Receipt of data electronically from insurers: actual rates for defined categories; base rate information; and premium, loss, exposure and other information, 2) an database to store the rates and other information electronically, along with functionality to process the data as described in the bill language, 3) adding security to the database, 4) make the data collected per this bill available to MO insurers through PDF files and on the MDI website, and 5) various reporting requirements.

Medical malpractice insurers will be required to re-file policy forms to conform with the cancellation provisions. There were approximately 89 insurers that have written premium for medical malpractice insurance in calendar year 2004. Insurers are required to submit a \$50 filing fee when refiling policy forms. The INS estimates one-time revenues to the Insurance Dedicated Fund of \$4,450 (89 insurers X \$50 filing fee).

This act creates the "Consumer Restitution Fund" for the purpose of preserving and distributing to aggrieved consumers funds obtained through enforcement proceedings brought by the director. As the number of cases and amount of funds recovered are not known, the fiscal impact to the fund is unknown.

Officials from the **Department of Corrections (DOC)** stated the DOC cannot predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in operational cost either through incarceration (FY 05 average of \$39.13 per inmate per day, or an annual cost of \$14,282 per inmate) or through supervision provided by the Board of Probation and Parole (FY 03 average of \$3.15 per offender per day, or an annual cost of \$1,150 per offender). Supervision by the DOC

ASSUMPTION (continued)

through probation or incarceration would result in additional unknown costs to the DOC. Eight (8) persons would have to be incarcerated per fiscal year to exceed \$100,000 annually. Due to the narrow scope of this new crime, it is assumed the impact would be less than \$100,000 per year for the DOC.

In response to a previous version of this proposal, officials from the **Missouri House of Representatives (MHR)** assumed any costs incurred by a member of the MHR would be a cost to the INS. As a result, the proposal would have no fiscal impact.

| <u>FISCAL IMPACT - State Government</u> | FY 2007 (10 Mo.) | FY 2008 | FY 2009 |
|---|---|---|---|
| GENERAL REVENUE FUND | | | |
| <u>Income - Civil Penalties Collected</u> | Unknown | Unknown | Unknown |
| <u>Costs - Department of Corrections</u> | | | |
| Increase in incarcerations or parole supervision | (Unknown less than \$100,000) | (Unknown less than \$100,000) | (Unknown less than \$100,000) |
| <u>Transfer-Out - County Treasurers</u> | | | |
| Transfer-out of penalties collected for distribution to schools | (Unknown) | (Unknown) | (Unknown) |
| ESTIMATED NET EFFECT ON GENERAL REVENUE FUND* | <u>(Unknown less than \$100,000)</u> | <u>(Unknown less than \$100,000)</u> | <u>(Unknown less than \$100,000)</u> |

* Collected penalties and distributions to county treasurers nets to \$0.

| <u>FISCAL IMPACT - State Government</u> | FY 2007 (10 Mo.) | FY 2008 | FY 2009 |
|--|---------------------------|---------------------------|---------------------------|
| INSURANCE DEDICATED FUND | | | |
| <u>Income - Department of Insurance</u> | | | |
| Form filing fees | \$4,450 | \$0 | \$0 |
| <u>Costs - Department of Insurance</u> | | | |
| Personal service costs (1.5 FTE) | (\$65,979) | (\$81,154) | (\$83,183) |
| Fringe benefits | (\$29,070) | (\$35,756) | (\$36,650) |
| Equipment and expense | <u>(\$32,964)</u> | <u>(\$3,614)</u> | <u>(\$3,722)</u> |
| Total <u>Cost</u> - Department of Insurance | <u>(\$128,013)</u> | <u>(\$120,524)</u> | <u>(\$123,555)</u> |
| ESTIMATED NET EFFECT ON INSURANCE DEDICATED FUND | <u>(\$123,563)</u> | <u>(\$120,524)</u> | <u>(\$123,555)</u> |
| CONSUMER RESTITUTION FUND | | | |
| <u>Income - Department of Insurance</u> | | | |
| Enforcement proceeding/restitution funds | <u>Unknown</u> | <u>Unknown</u> | <u>Unknown</u> |
| ESTIMATED NET EFFECT ON CONSUMER RESTITUTION FUND | <u>Unknown</u> | <u>Unknown</u> | <u>Unknown</u> |
| <u>FISCAL IMPACT - Local Government</u> | FY 2007 (10 Mo.) | FY 2008 | FY 2009 |
| LOCAL GOVERNMENTS - SCHOOLS | | | |
| <u>Income - County Treasurers</u> | | | |
| Transfer-in of penalties collected for insurance infractions | <u>Unknown</u> | <u>Unknown</u> | <u>Unknown</u> |
| ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS - SCHOOLS | <u>Unknown</u> | <u>Unknown</u> | <u>Unknown</u> |

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

This bill changes the laws regarding medical malpractice insurance and the enforcement powers of the Department of Insurance.

MEDICAL MALPRACTICE INSURANCE

The bill: (1) Allows limited liability companies, corporations, limited liability partnerships, partnerships, and other entities formed for the practice of law or medicine to become members of an association providing malpractice insurance to its members; (2) Requires the malpractice association's articles of association and bylaws to specify and define the types of assessments its members and former members might have to pay to cover losses and expenses incurred by the association; (3) Makes associations writing malpractice insurance subject to reporting, notification, and rating requirements; (4) Requires the Director of the Department of Insurance to establish risk reporting categories and reporting standards for insurers to annually report medical malpractice insurance premiums, losses, exposures, and other information the director may require. The director will compile this information in a manner appropriate for assisting medical malpractice insurers in developing future base rates, schedule rating, or individual risk rating factors and other aspects of their rating plans; (5) Requires the director to annually establish and publish a market rate reflecting the mean of the actual rates charged for each risk reporting category and publish comparisons of the base rates charged by each insurer; (6) Allows the director to issue administrative orders and seek other remedies specified in the bill to assure compliance for violations of the provisions relating to reporting medical malpractice information; (7) Prohibits medical malpractice insurers from charging rates that are excessive, inadequate, or unfairly discriminatory. Rates will be based upon Missouri loss experience if available, not experience from other states unless the failure to do so will jeopardize the financial stability of the insurer; and (8) Prohibits an insurer from increasing malpractice insurance rates by more than 15% or refusing to renew a policy without at least 60 days' written notification unless requested by the insured or due to changes in the insured's practice or risk characteristics. Insurers cannot cease issuing policies in this state without 180 days' written notice to the insured and the director. If an insurer fails to give notice, the policyholder has the right to continue coverage under the policy.

ENFORCEMENT OF VIOLATIONS OF THE STATE INSURANCE CODE

The bill: (1) Allows the director, upon determining that a person has violated or attempted to violate provisions of the insurance laws, to order the following relief: (a) An order directing the person to cease and desist from engaging in the act, practice, omission, or course of business; (b)

DESCRIPTION (continued)

A curative order or order directing the person to take other action necessary to comply with the insurance laws; (c) Order a civil penalty or forfeiture; and (d) Award reasonable costs of the investigation; (2) Authorizes fines of up to \$100,000 and imprisonment of up to 10 years if a person violates a cease and desist order. Currently, a person may be punished by a maximum \$1,000 fine and up to one year in jail; (3) Allows the director to suspend or revoke a corporation's or insurer's certificate of authority for violating insurance laws or for a felony or misdemeanor conviction. The director must provide 30 days' notice and a hearing, if requested, before revocation; (4) Allows the director to seek redress in county circuit courts. The court can issue injunctions, freeze assets, or take other action as specified. A consumer restitution fund is created for preserving and distributing disgorgement or restitution funds obtained through enforcement procedures to aggrieved consumers; (5) Classifies various violations of insurance laws into five categories from level one through level five. Maximum fines are established at each level with level one being the least and level five the highest. All fines collected will go to fund public schools as required by Article IX, Section 7, of the Missouri Constitution.

HEALTH CARE STABILIZATION FUND FEASIBILITY BOARD

The bill creates the Health Care Stabilization Fund Feasibility Board within the Department of Insurance to analyze medical malpractice data to determine whether a health care stabilization fund should be established in Missouri. As part of its duties, the board will conduct a comprehensive study on whether a health care stabilization fund is feasible within Missouri, or specified geographic regions thereof, or for specific medical specialties. If a health care stabilization fund is feasible within Missouri, the report will also recommend to the General Assembly on its structure, design, and funding.

The board will consist of 10 members including: (1) The Director of the Department of Insurance or his or her designee; (2) Two members of the Senate appointed by the President Pro Tem with no more than one from any political party; (3) Two members of the House of Representatives appointed by the Speaker with no more than one member from any political party; (4) One member who is licensed to practice medicine as a medical doctor in Missouri and is on a list of nominees submitted to the director by an organization representing Missouri's medical professionals; (5) One member who practices medicine as a doctor of osteopathy and is on a list of nominees submitted to the director by an organization representing Missouri's doctors of osteopathy; (6) One member who is a licensed nurse in Missouri and is on a list submitted to the director by an organization representing Missouri's nurses; (7) One member who is a representative of Missouri's hospitals and is on a list of nominees submitted to the director by an organization representing Missouri's hospitals; and (8) One member who is a physician and who is on a list submitted to the director by an organization representing Missouri's family physicians.

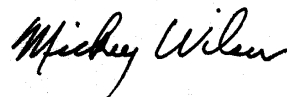
DESCRIPTION (continued)

The director will appoint the members of the board, other than the General Assembly members, no later than January 1, 2007. The board will meet at least quarterly and submit its final report and recommendations regarding the feasibility of a health care stabilization fund to the Governor and the General Assembly by December 31, 2010. The board is also required to submit annual reports on its progress, and the board will expire December 31, 2010.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Attorney General
Office of Administration -
 Division of General Services/Risk Management
 Administrative Hearing Commission
Office of State Courts Administrator
Department of Corrections
Department of Insurance
Missouri House of Representatives
Missouri Senate
Office of Secretary of State



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Director
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